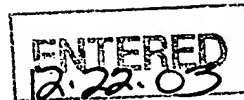


TENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY



To:
JAMES B. MYERS, JR.
WOODARD, EMHARDT, MORIARTY, MCNETT &
HENRY LLP
BANK ONE CENTER/TOWER, SUITE 3700
111 MONUMENT CIRCLE
INDIANAPOLIS, IN 46204

PCT

WRITTEN OPINION

(PCT Rule 66)

Applicant's or agent's file reference 7255-3COLEMA		Date of Mailing (day/month/year) 22 OCT 2003 REPLY DUE within 2 months/days from the above date of mailing
International application No. PCT/US03/00608	International filing date (day/month/year) 09 January 2003 (09.01.2003)	Priority date (day/month/year) 09 January 2002 (09.01.2002)
International Patent Classification (IPC) or both national classification and IPC IPC(7): A01N 37/00, 37/08, 37/10, 37/44 and US Cl.: 504/142, 144, 147		
Applicant SUMMERDALE, INC.		

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☒ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 09 May 2004 (09.05.2004).

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703)305-3230	Authorized officer Alton Fryor Telephone No. 703 308-1235
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Form PCT/IPEA/408 (cover sheet)(July 1998)

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OCT 27 2003

Woodard, Emhardt, Moriarty,
McNett & Henry LLP

WRITTEN OPINION

International application No.

PCT/US03/00608

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 - pages 1-26, as originally filed
 - pages NONE, filed with the demand
 - pages NONE, filed with the letter of _____
- ☒ the claims:
 - pages 27-31, as originally filed
 - pages NONE, as amended (together with any statement) under Article 19
 - pages NONE, filed with the demand
 - pages NONE, filed with the letter of _____
- ☐ the drawings:
 - pages NONE, as originally filed
 - pages NONE, filed with the demand
 - pages NONE, filed with the letter of _____
- ☐ the sequence listing part of the description:
 - pages NONE, as originally filed
 - pages NONE, filed with the demand
 - pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.
PCT/US03/00608

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>6-8,13,14,18,20-32</u>	YES
	Claims <u>1-5,9-12,15-17,19</u>	NO
Inventive Step (IS)	Claims <u>6-8,13,14,18,20-32</u>	YES
	Claims <u>1-5,9-12,15-17,19</u>	NO
Industrial Applicability (IA)	Claims <u>1-32</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-5,9-12,15-17,19 lack novelty and an inventive step under PCT Article 33(2)-(3) as being obvious over Farber et al teaches a composition comprising pelargonic acid and serine. See abstract.

Claims 6-8,13,14,18,20-32 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the instant inventions comprising the organic acids of claims 6-8,13,14 and carriers of claim 18.

Claims 1-32 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

WRITTEN OPINION

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VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

Claim 19 is objected to under PCT Rule 66.2(a)(iii) as containing the following defect(s) in the form or contents thereof: In claim 19 line 3 it is unclear as to what is meant by "i.e., as a ready-to-use formulation".

WRITTEN OPINION

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PCT application of
SUMMERDALE, INC., et al

) Authorized Officer:
) Alton Pryor

International Application
Number PCT/US03/00608

)
)
) Mailing Date
) 09 December 2003

International Filing Date
09 January 2003

)
) Agent's File

Title of Invention
FUNGICIDE COMPOSITIONS

) Reference:
) 7255-3COLEMA
) ;

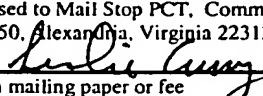
RESPONSE TO WRITTEN OPINION

Mail Stop PCT
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Attn: IPEA/US

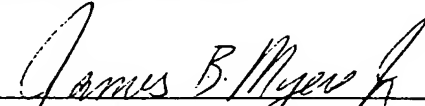
Dear Sir/Madam:

In response to the Written Opinion mailed 22 October 2003,
regarding the above-referenced PCT Patent Application, Applicant does
not wish to make any amendments at this time.

"Express Mail" label number EV 334 085 76849
Date of Deposit 09 December 2003
I hereby certify that this paper or fee is being deposited with
the United States Postal Service "Express Mail Post Office to
Addressee" service under 37 CFR §1.10 on the date indicated
above and is addressed to Mail Stop PCT, Commissioner for
Patents, PO Box 1450, Alexandria, Virginia 22313-1450.

Signature of person mailing paper or fee

Respectfully submitted

By


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